

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	NO.97-CR-30089-WDS
)	
DERRICK MITCHELL,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

STIEHL, District Judge:

This matter is before the Court for docket control. The defendant filed a motion to vacate sentence (Doc. 760), which is, in essence, a collateral attack on his sentence. No matter what the title, if the motion is actually one which seeks review of the sentence, it must be filed as a habeas action pursuant to 28 U.S.C. § 2255. The defendant filed this motion after his second or successive habeas petition had been denied by the Seventh Circuit. *Mitchell v. United States*, 02-CV-906-WDS (See, Doc. 34). In light of the fact that this motion seeks review of his sentence, and he has not received leave to file a second or successive petition, the motion to vacate is **DISMISSED**. See, *Nunez v. United States*, 96 F.3d 990 (7th Cir. 1996).

IT IS SO ORDERED

DATE: 17 November, 2010

s/ WILLIAM D. STIEHL
DISTRICT JUDGE